

In Re Application Of: Brian P. Roarty  
Serial No. 10/797,255  
Filed: 03/10/2004  
For: Implementation...

Examiner: Erin M. Boyd  
Group Art Unit: 3663  
Atty. Docket No:  
Date: Jan. 17th, 2010

### **RESPONSE TO OFFICE ACTION**

This is in response to the Final Office Action mailed 07/17/2009. As this Office Action is subsequent to a restriction election, claims 04-10 are currently pending in this application and are addressed in this Response.

### **CLAIMS NOT INCLUDED IN OFFICE ACTION**

Claims 1-3 and Claims 11-23 were not included in the Final Office Action but were withdrawn from consideration through a Restriction Election.

### **OBJECTION TO THE SPECIFICATION**

The sole ground for the objection to the specification – not to the claims – for the present invention is stated simply: the doubt that “the phenomena on which the application is based (i.e. LENR) is inoperative” (FOA, p. 4, ¶5, line 5-6). This is repeated later as the assertion on page 12 in paragraph 12: “LENR in this system lacks credibility in view of the over all situation with regard to the production of cold fusion (LENR).”

This ground is supported by citation to a theoretical objection by Fukai, casting “doubt on the occurrence of cold fusion induced by tunneling through the Coulomb barrier”, and Fukai’s assertion that “there is no way to sustain such close D-D pairs in any solids”. My application and invention do not depend upon any assertion of an induction of cold fusion by tunneling through the Coulomb barrier and do not require deuterium or D-D pairs. An objection which is to the theory behind an invention is insufficient to stand against evidence of a reality observed by the inventor and submitted via his declaration as valid and uncontradicted evidence, particularly when said evidence is replicable – not